

21 *Certificate of termination of service.*—Every workman shall be entitled to a Service Certificate at the time of his termination, discharge, dismissal or retirement from the service.

22 *Liability of the Manager.*—The Manager of the establishment shall be held personally responsible for the proper and faithful observance of these Standing Orders

23 *Exhibition of Standing Orders.*—(1) A copy of these Standing Orders in English and Hindi shall be pasted at the Manager's Office as well as on a notice board maintained at or near the main entrance of the establishment marked 'Standing Orders' and shall be kept in a legible condition.

(2) In case of any conflict in the meaning of the Standing Orders in English or Hindi language, the English text shall be taken to be authentic

The 15th July, 1972

No. 7751-4Lab-72/30428.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Hindustan Machine Tools Limited, Pinjore (Ambala)

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT HARYANA,  
ROHTAK

Reference No. 1 of 1972

between

SHRI Y.P. ARORA AND THE MANAGEMENT OF M/S HINDUSTAN MACHINE TOOLS  
LIMITED, PINJORE (AMBALA)

Present—

Shri Y.P. Arora applicant in person  
Memo for the management

#### AWARD

Dr. Y.P. Arora was working as a Medical Officer in M/s Hindustan Machine Tools Limited, Pinjore (Ambala). The management terminated his services without disclosing the true cause for this action. This gave rise to an industrial dispute and the Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 was pleased to refer the following dispute to this court for adjudication,—vide Haryana Government Gazette Notification No.ID/Amb/65-1-71/40381, dated 13th December, 1971 :—

“whether the termination of services of Shri Y.P. Arora was justified and in order ? If not; to what relief is he entitled?”

On receipt of the reference usual notice was issued to the parties for 17th April, 1972. On the date fixed the applicant Dr Y.P. Arora was present in person and Shri Bhagirath Das Advocate appeared on behalf of the management. He filed a written statement in which the only objection taken was that Dr Y.P. Arora was employed in the company's managerial/supervisory cadre having the powers of assigning duties of distribution of work and he had a supervisory role in the organisational set up, and, therefore, he could not be considered as a workman. It was prayed that this question should be decided first because this objection would go to the root of the jurisdiction of the court to adjudicate upon the dispute and the management reserved their right to submit the written statement on merits, if the question of jurisdiction is decided in favour of the applicant.

It was pointed out to the learned representative of the management that legally it is not permissible to file an incomplete written statement. The learned representative then undertook to file a complete written statement within three or four days. The case was, therefore, adjourned to 1st May, 1972 for filing of the complete written statement with an advance copy to the applicant who was directed to file his replication on 1st May, 1972. Naturally the object was to frame issues which should arise from the pleadings of the parties, on 1st May, 1972. On the date fixed Dr. Y.P. Arora was present in person but nobody appeared on behalf of the management nor any written statement as promised by the learned representative of the management was received. There was, therefore, no option but to give an adjournment to the applicant to produce his evidence, and the case was adjourned to 8th June 1972 for this purpose. It was also ordered that the management be informed of this date. In the meantime, the management submitted their complete written statement by post which is dated 5th May, 1972 and was received on 15th May, 1972. On 8th June, 1972 Dr. Y.P. Arora was present but nobody appeared on behalf of the management. Only a telegraphic request was received for adjournment on the ground that the counsel for the management was not available. Nobody was deputed to appear in the court to request for an adjournment. A telegraphic request for adjournment on the ground mentioned could not be considered to be in order. In the interest of justice, however, no notice of this irregularity was taken because the management had submitted their complete written statement in compliance with the orders of the court. The following issues which arose from the pleadings of the parties were framed :—

(1) Whether the applicant Dr Y. P. Arora is not a workman ?

(2) Whether the termination of services of Shri Y.P. Arora was justified and in order ? If not, to what relief is he entitled ?

The case was adjourned for evidence of the parties to 4th July, 1972 and the management were ordered to be informed of the date fixed. The applicant approached the court with a request to change the date because on account of unavoidable circumstances he could not appear on 4th July, 1972 and he prayed for a short adjournment. At his request the case was adjourned to 6th July, 1972 and the management were again informed of the changed date. No body has again appeared on behalf of the management in spite of notices. Only a written request was received that their counsel Shri Bhagirath Dass is out of India and he is likely to return only by 20th July, 1972. As already observed Shri Bagirath Dass had appeared in the court on 17th April, 1972 and he never informed the court that he would remain out of India till 20th July, 1972. When the management made a telegraphic request for adjournment, it was never intimated that their counsel was out of India and would not be available before 20th July, 1972. It has not been explained why it has not been possible for the management to make alternative arrangement. The absence of the management on 1st May, 1972 and the repeated request made by them for adjournment without even deputing any body to appear in court shows that no serious notice of the dates fixed by the court is taken by the management. The management even does not care to inform the court of the date which would be convenient to their representative and they make a request for an adjournment by post only after a date is fixed and the applicant is unnecessarily made to incur expenses for attending the court again and again. If for any reason Shri Bhagirath Dass is not available it does not mean that the management should take no steps whatsoever to ensure their representation in court on the dates fixed. Under these circumstances there was no other alternative but to proceed with the evidence of the applicant in view of the provisions of rule 22 of the Industrial Dispute (Punjab) Rules, 1958. The evidence of the applicant has been recorded. He has appeared as a witness in support of his case. I have gone through his evidence and my findings are as under :—

#### Issue No. 1 :

The applicant has stated that he joined the service of the respondent company as a Medical Officer on 11th January, 1965 and he had no supervisory/managerial powers. He says that his duty was simply to examine the patients and to prescribe medicines or perform operations occasionally and his salary was Rs 1,030 per month. He says that on his own he could not sanction any leave nor take any disciplinary action against any employee. In answer to court question he stated that the managerial/supervisory powers were vested in Dr. H.R. Misra/Administrative Medical Officer and if Dr. Misra happened to be on leave and authorised him to sanction leave or to prepare the duty roster than he performed the duty only in his absence on the strength of the authority delegated to him but his appointment as a Medical Officer did not vest him with any such powers.

It has been held in A.I.R. 1961 Asam-30 that the function discharged by a Medical Officer includes diagnosis and prognosis which is a work of highly technical nature, and a lay man cannot perform these duties, a doctor has to possess a knowledge of specialized character. A Medical Officer, therefore, comes within the meaning of word "technical" and is thus a workman within the meaning of section 2(s) of the Industrial Disputes Act. The same view has been taken by the Supreme Court in the leading case of *Burmah Shell Oil Storage* and reported in 1971-Lab-IC-699. The question as to who is a workman as defined in the Industrial Disputes Act has been exhaustively discussed and it has been held that chemists employed by the Company would fall within the definition of a workman. It has been further held that a small amount of the supervision was only incidental to his own technical work of testing and giving the result of test to the company. This very principle applies to the case of applicant as well. Relying on these authorities, I hold that the applicant would fall within the definition of workman. I, therefore, find this issue in favour of the applicant.

#### Issue No. 2 :

The applicant has stated in his evidence that the termination of his service was not justified. He says that on 31st July, 1972 he was called in the office of the Deputy General Manager where the Personnel Manager complained that he (applicant) had recommended leave to the Stenographer of the Personnel Manager without any justification. The applicant says that he explained that the Stenographer was running high temperature but the Personnel Manager was not satisfied and he threatened him that either he should resign or he would be got dismissed and so the applicant immediately brought all these facts to the notice of the General Manager by means of a registered letter, copy of which is marked Exhibit W/1, the postal receipt is Marked W/2. The applicant says that on 4th August, 1971 he received a letter dated 2nd August, 1971 marked Exhibit W/3 under the signature of the Deputy General Manager by which the applicant was informed that his services stood terminated w. e. f. 2nd August, 1971 and that he would be paid one month's salary in lieu of notice in accordance with clause 3 of his appointment letter. The applicant says that after Dr. Misra he was the senior most Medical Officer and Dr. Misra was intending to give up the services of the Company and go abroad and in normal circumstances the applicant would have succeeded Dr. Misra and his services have been terminated with a view to deprive him of his chances of promotion.

The letter by which the services of the applicant were terminated indicates as if it is a case of discharge simpliciter in accordance with the terms of letter of appointment, but in the written statement the management have pleaded that the services of the applicant have been terminated because there was a complaint that the applicant was issuing false certificates to the workmen certifying them to be ill although they were fit and this was being done by him on receipt of certain illegal considerations from the workmen. An instance has been cited in which one Shri B.N. Punnu is said to have paid a sum of Rs. 12 for obtaining a certificate for Shri Jagjit Singh who is his co-worker. The plea taken by the management is that they had lost confidence in the applicant and for this reason his services were terminated. If the applicant was guilty of misconduct and was in the habit of accepting illegal gratification

then it was essential of the management to charge-sheet the applicant and hold an inquiry before terminating his services. A discharge simpliciter under these circumstances cannot be held to be in order because it would only amount to a colourable exercise of the powers if any vested in the management. This view has been taken by the Supreme Court in the authority which is reported in AIR-1963-Supreme Court-411. I am, therefore, of the opinion that the termination of services of the applicant cannot be said to be justified and he is entitled to be reinstated with continuity of service and full back wages. I give my award accordingly. No order as to costs.

Dated the 11th July, 1972.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 1264, dated Rohtak, the 11th July, 1972.

Forwarded (4 copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 7756-4Lab-72/30430.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to Publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Sunder Singh & Sons, G.T. Road, Bada Malik, P.O. Nerela, (Sonapat).

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 94 of 1972

between

SHRI SEWA SINGH AND THE MANAGEMENT OF M/S SUNDER SINGH & SONS,  
G.T. ROAD, BADH MALIK, P.O. NERELA (SONEPAT)

Present:

Shri Ram Kishan Sehgal, for the applicant.  
Shri D.C. Chadha for the management.

#### AWARD

The Governor of Haryana in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 was pleased to refer the following dispute to this court for adjudication,—vide Government Notification No. ID/RK/185-A/72/9449-53, dated 14th March, 1972 :—

Whether the termination of service of Shri Sewa Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties. It is, however, not necessary to decide the case on merits because a compromise has been arrived at between the parties. The statements of the workman and Shri Ram Narain Manager have been recorded. The workman has received a sum of Rs. 1,150 in the presence of the court and has given up his claim for re-instatement. No amount is due to the workman on account of wages. The management claim that a sum of Rs 75 (Rupees esventy-five only) was paid to the workman in advance and they will check up their record. If the advance has not been paid back by the workman then this amount would be deducted from the amount of the bonus which may fall due to him. There is no other dispute between the parties and the workman is not entitled to any further relief. I give my award as per terms of compromise between the parties. No order as to costs.

Dated the 10th July, 1972.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.

No. 1248, dated the 11th July, 1972.

Forwarded (4 copies) to the Secretary to the Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL,  
Presiding Officer,  
Labour Court, Haryana,  
Rohtak.